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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications)
Act)
)
Regulatory Treatment of Mobile)
Services)
)

Reply Comments of The Ericsson Corporation

The Ericsson Corporation on behalf of itself and affiliated companies (hereinafter collectively referred to as "Ericsson"), by its attorney hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking*¹ in the above-captioned proceeding. In support thereof, Ericsson states as follows:

Ericsson's comments in this proceeding are limited to discussion of the proposal of Nextel Communications, Inc. ("Nextel") which would create a contiguous 10 MHz block of spectrum for ESMR operators by "retuning" the facilities of traditional SMR licensees.² As will be set forth in more detail below, Ericsson opposes the Nextel proposal on the basis that

¹ *Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, FCC 94-100 (May 20, 1994) ("FNPRM").

² *Comments of Nextel Communications, Inc.*, GN Docket 93-252 (June 20, 1994) (hereinafter "Nextel Comments").

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Nextel has not demonstrated a need for a clear 10 MHz of spectrum; its proposal is manifestly unfair to the many thousands of traditional SMR licensees whose facilities would be retuned; and it has not been demonstrated that all traditional SMR licensees whose facilities would have to be retuned could be accommodated in the frequency band suggested by Nextel.

I. Nextel Has Not Made A Sufficient Demonstration of Need for Clear Spectrum

At the outset, Nextel's proposal for 10 MHz of exclusive, contiguous clear spectrum (SMR channels 401-600) is wholly unjustified. The ostensible justification for its self-serving proposition is that cellular and PCS licensees have contiguous spectrum, therefore regulatory parity demands that ESMR licensees have contiguous spectrum. This argument fails for two primary reasons.

First, Nextel admits that ESMR systems will require more than the 10 MHz of clear, contiguous spectrum it seeks under its proposal.³ Therefore, Nextel will use channels in the SMR bands other than channels 401-600. It logically follows that if ESMR systems will consist of a mixture of channels from the various SMR channel groups, ESMR systems are fully capable of operating efficiently in such a manner and it is not necessary to create an exclusive ESMR band in the first place.

Second, though the Omnibus Budget Reconciliation Act of 1993⁴ provides that all CMRS providers should be subject to

³ Nextel Comments, p. 14.

comparable regulation, there is nothing in the Budget Act which requires regulations to be identical in all respects. With respect to CMRS providers the FCC recognized it was required to "....amend its rules 'as may be necessary and practical to assure that licensees in such services are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services'." ⁵ As set forth above, the relief requested is not technically necessary and as will demonstrated below, the Nextel proposal is not practical to implement because it is inequitable to traditional SMR licensees.

II. The Nextel Proposal Is Unfair To Traditional SMR Operators

Nextel asserts that its retuning proposal will not result in any traditional SMR licensee losing any channels under its plan. ⁶ This conclusion is based on the fact that all traditional SMR licensees operating on channels 401-600 will be moved to the non-public safety channels allocated for SMR operations at the sole expense of ESMR licensees. ⁷ This argument is not

⁴ Omnibus Budget Reconciliation Act of 1933, Publ. L. No. 103-66, Title VI, Sec. 6002(b)(2)(B), 107 Stat. 312, 392 (1993) (hereinafter "Budget Act").

⁵ FNPRM at pp. 7-8, citing to Budget Act, Sec. 6002(d)(B).

⁶ Nextel Comments, p. 11.

⁷ Ericsson is skeptical that retuning is as easy to accomplish as inferred by Nextel. In this regard, the Commission is requested to review comments and reply comments filed in the Refarming proceeding. *Notice of Proposed Rule Making*, PR Docket No. 92-235, 7 FCC Rcd 8105 (released November 6, 1992). There, though the FCC originally believed the first phase shift to

persuasive.

At the present time there are no 800 MHz trunked SMR channels available in most urban markets in the United States. In fact, at the present time, there are waiting lists for such channels. Thus, only one of two assumptions can be drawn about Nextel's proposal. Either Nextel's assessment of the ability to preserve all channels for existing traditional SMR licensees whose systems will be retuned is wholly inaccurate and its proposal is fatally flawed or Nextel's solution is to cram more traditional SMR licensees into an already overcrowded spectrum band.


Moreover, the crowding and interference problem will be exacerbated since Nextel has unequivocally stated that ESMR systems will use channels in the non-public safety SMR bands in addition to the exclusive ESMR channel group (channels 401-600). Thus, ESMR licensees will compete with traditional SMR operators for access to the very non-public safety SMR channels to which traditional SMR systems would be retuned. Simply put, Nextel's proposal will compromise the technical integrity of traditional SMR systems. Accordingly, Nextel's proposal has to be viewed with a very healthy degree of skepticism.

narrowband technology could be accomplished by relatively easy "screwdriver adjustments" to PLMR equipment, that turned out not to be the case. Numerous comments submitted in the Refarming proceeding suggested that such adjustments were extremely complicated and, most importantly, could not be accomplished without an expenditure of billions of dollars of cost for the entire PLMR industry.

III. Conclusion

Nextel has failed to demonstrate a technical need for a contiguous block of ESMR spectrum. Nextel has failed to show that retuning all traditional SMR facilities will not result in a loss of channels to such licensees. And Nextel has failed to demonstrate that its retuning proposal will not compromise the technical integrity of traditional SMR systems. For the foregoing reasons, the Commission should not adopt Nextel's proposal for an ESMR block of spectrum.

Respectfully submitted,
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